IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6332 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JV SHAH

Versus

D.G.P

Appearance:

Mr. Shivang J. Shukla, for MR YN OZA for Petitioner.

Mr. Sudhir Mehta, AGP for Respondents.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 01/08/2002

ORAL JUDGEMENT

What is under challenge in this petition is the order of suspension passed by the Deputy Police Commissioner which was not served on the petitioner till the date of filing of this petition. The petitioner has also challenged the initiation of departmental inquiry against the petitioner on the ground that on identical

and similar charges a case in the Criminal Court is also pending against the petitioner and thus the action of the authority of initiating departmental inquiry vide order dated 14.8.1989 was illegal, arbitrary and also violative of Articles 14 and 16 of the Constitution of India.

2. The petitioner was working as a Senior Clerk in the office of the respondent No.4 and his service tenure was about 20 years and he was discharging his duties with all sincerity and honesty. As the petitioner was working as a Senior Clerk at the Police Headquarters at Shahibaug on 3rd December 1986 the petitioner had taken cash-book along with him to the residence of Office Superintendent, for obtaining his signature in the cash book, as on the next date i.e. on 4.12.1996 inspection from the Office of A.G. Rajkot was to take place. It is further stated in the petition that along with him one Shri Zala, Junior Clerk had also accompanied and after taking the signature of Office Superintendent, in the cash book, they were returning and in the way they lost the said cash book in transit. The petitioner had immediately reported to the Naroda police station about the missing file and there was no intention on the part of the petitioner to play mischief with the original vouchers or entries in the cash book. The respondent authorities were not satisfied with the explanation given by the petitioner and a criminal complaint was lodged against the petitioner which was pending in the Court of Metropolitan Magistrate, Court No.2 at Ahmedabad and the case was pending in the Court of learned Metropolitan Magistrate,Court No.2 at Ahmedabad.

3. The petitioner was thereafter transferred from Police Headquarters, Shahibaug to S.R.P. Group II at Saijpur Bogha, Naroda, vide order dated 4-8-1989. The petitioner therefore submitted that once the power of transfer was exercised it was not open for the respondent to pass an order of suspension. The petitioner has further submitted that after the alleged incident of 3rd December 1996 the petitioner is performing his duties with all sincerity and there is no case of petitioner tampering with any evidence or influencing the witnesses. It was further stated that passing of the impugned order of suspension after 3 years, more particularly when the petitioner was transferred vide order dated 4.8.1989, would be hit by the principles laid down by this Court in the case reported in 27(1) GLR 41, wherein it was laid down that the power of the authority to suspend and transfer an employee is required to be exercised only in the rarest of rare cases and sparingly.

4. The petitioner has further submitted that the initiation of departmental inquiry when the criminal case was pending on identical charges was also violative of the decision of this Court reported in 22 GLR Page 805 and therefore the decision dated 14.8.1989 to initiate the departmental inquiry against the petitioner was arbitrary and unreasonable and being violative of Articles 14 and 21 of the Constitution of India is required to be quashed and set aside.

5. The petitioner has further submitted that when there was no prima facie case against the petitioner for dismissal, removal or compulsory retirement if after an enquiry was held and charges were proved against the petitioner, the order of suspension was illegal on this ground.

6. This petition was admitted by this Court on 16.10.1989 and interim relief was granted restraining the respondents from proceeding with the departmental inquiry till further orders. The said interim relief was continued till the pendency of the petition vide order passed by this Court on 20th February 1992. The respondents have filed their appearance and affidavit-in-reply was also filed, wherein it was submitted that the criminal complaint related to theft while the departmental proceedings were relating to carelessness and negligence in performance of duties and therefore it cannot be said that the departmental proceedings and the original complaint were based on the same charges and it would affect the defence of the petitioner in criminal proceedings. It was further submitted that there was a policy decision to the effect that whenever criminal proceedings and departmental inquiry are contemplated simultaneously no final decision is taken in the departmental inquiry till the criminal proceedings are culminated and therefore also the contention of the petitioner does not survive.

7. Heard Mr. Shivang J. Shukla, learned advocate for Mr. Y.N. Oza, ld. Senior Counsel for the petitioner and Mr. Sudhir Mehta, learned AGP for the respondents. In the foregoing facts it is alleged that the incident was of 1986 and this Court has stayed the departmental proceedings on 16-10-1989. The order of suspension was passed after three years as it was the contention of the petitioner that it was not served on him within the stipulated time. The learned AGP has not placed the order of suspension on record ever since the departmental proceedings were stayed by this Court way back on 16-10-1989. The ld. advocate appearing for the

petitioner has relied on the order passed by this Court on 6-10-2000 in Special Civil Application No. 8511 of 1992, wherein it has been held that as the impugned order of suspension has remained inoperative since 24th December 1992 in view of passage of time there shall be no justification in permitting to operate the impugned order after nearly 8 years. After making the above observations, this Court has allowed the petition. In the present case also, if it is assumed that the order of suspension was passed some where in 1989, before filing of the petition wherein the said suspension is challenged, in that case also the order of suspension remained in operation for more than 13 years. There is no proper justification to keep the said suspension order in operation for about 13 years. I am, therefore, of the view that the alleged suspension order is required to be quashed and set aside. However, the interim relief granted by this Court against holding departmental inquiry is required to be vacated and the respondent authorities are at liberty to proceed with the said inquiry if they so desire. By this time, the criminal proceedings might have been over. If as a result of departmental proceedings if any order adverse to the petitioner is passed by the respondent authorities, the same may not be implemented for a period of 15 days so as to enable the petitioner to challenge the said order before appropriate forum.

8. Subject to the above directions, the petition is disposed of accordingly. Rule is made absolute to the above extent. There shall be no order as to costs.

rmr. [K.A. Puj, J.]